

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Darren S. Simmons, #182509,
Plaintiff,

v.

Michelle D. Fox;
Shelly R. Stokes;
Amy Smith, RN, CHCA;
Michael J. Beinar, MD;
Warden Willie L. Eagleton;
A/W Robin Chavis;
A/W Rolland McFadden;
Ethel Redfern Miller;
Sued in their individual capacity under
color of state law,
Defendants.

Case No. 8:11-cv-2809-RMG

ORDER

In this *pro se* action, Plaintiff contends that his civil rights were violated and that he is entitled to relief pursuant to 42 U.S.C § 1983. Pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2)(d), DSC, the case was automatically referred to the United States Magistrate Judge for pretrial proceedings and a Report and Recommendation. On November 1, 2011, the Magistrate Judge issued a Report and Recommendation recommending that Plaintiff's Complaint be dismissed because the Complaint is duplicative of complaints which Plaintiff has filed in two other cases before this Court. (Dkt. No. 14). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. (*Id.* at 6). Plaintiff did not file any objections. As explained herein, this Court adopts the Magistrate's Report and Recommendation and dismisses Plaintiff's Complaint.

LAW/ANALYSIS

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate with instructions.” *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

The Court, having reviewed the Report and Recommendation, Plaintiff’s Complaint in this case and the related cases, and the applicable legal standards, hereby adopts the Report and Recommendation of the Magistrate Judge (Dkt. No. 14) as the order of the Court. As explained in the Report and Recommendation, Plaintiff has two other cases pending before this Court which allege deliberate indifference to medical needs against the same Defendants named in this case, based on substantially the same set of facts. *See Darren S. Simmons v. Robert Schulze, et al.*, Civil Action No. 8:11-703-RMG-JDA (D.S.C.) (removed from the Marlboro County Court of Common Pleas on March 23, 2011); *Darren S. Simmons v. Nurse Shelly Stokes, et al.*, Civil Action No. 8:11-00175-RMG-JDA (D.S.C.) (received by the Court for filing on January 24, 2011). Thus, Plaintiff’s Complaint in this case should be dismissed. *See Cottle v. Bell*, No. 00-6367, 2000 WL 1144623, at *1 (4th Cir. Aug. 14, 2000) (“Because district courts are not required to entertain duplicative lawsuits, they may dismiss such suits as frivolous pursuant to § 1915(e).”); *Aziz v. Burrows*, 976 F.2d

1158 (8th Cir. 1998) ("[D]istrict courts may dismiss a duplicative complaint raising issues directly related to issues in another pending action brought by the same party".); *see also Aloe Creme Laboratories, Inc. v. Francine Co.*, 425 F.2d 1295,1296 (5th Cir. 1970) ("The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time. Once was sufficient.").

Therefore, the Court adopts the Magistrate's Report and Recommendation in its entirety as the Order of this Court, and the Plaintiff's Complaint is dismissed without prejudice.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Gergel', is written over a horizontal line.

Richard Mark Gergel
United States District Court Judge

December 16, 2011
Charleston, South Carolina